



January 27, 2000

Mr. Jerry E. Drake, Jr.
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2000-0275

Dear Mr. Drake:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131198.

The City of Denton (the "city") received a request for "any and all psychological reports, psychological test grades, comments and evaluations on Christopher Andrew Putnam." You claim that the requested information is at this time excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you claim that the submitted information is excepted from disclosure because it is analogous to a "test item" as defined by section 552.122 of the Government Code. Exceptions under the Public Information Act generally do not apply when the information is subject to access provisions outside of the act. *See* Open Records Decision Nos. 598 at 1 (1991) (Public Information Act exceptions are not applicable to medical records), 525 (1989). Because the release of the information at issue is governed by a statute outside the Public Information Act, we do not address your claim under section 552.122 of the Government Code.

The submitted information consists of psychological records, the release of which is governed by section 611.002 of the Health and Safety Code. Section 611.002 states as follows:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Section 611.0045(a) of the Health and Safety Code reads as follows:

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

The requestor in this instance is the subject of the records at issue. Since the requestor is the “patient,” section 611.0045(a) gives the requestor a right of access to the requested information, except as provided by other subsections of section 611.045. *See* Open Records Decision No. 565 at 3 (1990) (upon written consent of subject, mental health records must be released). Other subsections of section 611.0045 permit a professional to deny a patient access to that patient’s mental health records, but only in certain circumstances and in accordance with certain procedures that do not appear applicable here. *See* Health & Safety Code § 611.0045(b)-(j). Consequently, in accordance with the disclosure provisions of chapter 611 of the Health and Safety Code, the city must release the requested information to the requestor. *See* Gov’t Code § 552.229.

Although we have concluded that the release of the requested information is governed by section 611.002 of the Health and Safety Code, we will nonetheless address your claims that section 552.101 of the Government Code excepts the submitted information in conjunction with other statutes that are also outside the Public Information Act. You assert that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with the Americans with Disabilities Act of 1990 (the “ADA”). Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes outside the Public Information Act. In Open Records Decision No. 641 (1996), this office determined that medical information obtained pursuant to the ADA, 42 U.S.C. § 12101 *et seq.*, is confidential under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 12112; *see also* 29 C.F.R. § 1630.14(b)(1) (providing that medical information “shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record”). However, because the requestor is the subject of the medical information at issue, we believe that the requestor has a special right of access to the information in this instance. *See* Gov’t Code § 552.023.

You additionally claim that the submitted information is excepted from disclosure pursuant to section 143.022 of the Local Government Code. You argue that “the premature release is implicitly prohibited by the retest provisions of § 143.022(c) of the Texas Local Government Code.” To fall within section 552.101, a statute must explicitly require

confidentiality; a confidentiality requirement will not be implied from the statutory structure. *See* Open Records Decision No. 478 at 2 (1987). In this instance, the statute does not expressly make confidential the results of psychological testing in the civil service context, and you do not point to a specific confidentiality provision. Consequently, the information is not confidential under section 143.022 of the Local Government Code, and may not be withheld pursuant to this statute in conjunction with section 552.101 of the Government Code. Therefore, the submitted information must be released in accordance with section 611.002 of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 131198

Encl. Submitted documents

cc: Mr. Chris Putnam
3945 Fawn
Denton, Texas 76201
(w/o enclosures)